

# **PREDETERMINATION SETTLEMENT AGREEMENT**

CP# 07-15-67707  
HUD# 07-15-0528-8

## **PARTIES TO THE SETTLEMENT AGREEMENT:**

### **RESPONDENTS**

**M & B INVESTMENTS, LLC**  
3809 NW 109<sup>th</sup> Street, Suite D  
Urbandale, Iowa 50322-2006

**WESTBROOKE CONSTRUCTION CO.**  
7113 Douglas Avenue  
Urbandale, Iowa 50322-3201

**WADE SQUIERS**  
Fusion Architects, Inc.  
1641 Boyson Square Drive, Suite 100  
Hiawatha, Iowa 52233-2341

**FUSION ARCHITECTS, INC.**  
1641 Boyson Square Drive, Suite 100  
Hiawatha, Iowa 52233-2341

### **COMPLAINANT**

**ANGELA WILLIAMS**  
Commissioner, Iowa Civil Rights Commission  
400 East 14<sup>th</sup> Street  
Des Moines, Iowa 50319

and

**IOWA CIVIL RIGHTS COMMISSION**  
400 East 14<sup>th</sup> Street  
Des Moines, Iowa 50319

### Complainant's Allegations:

Complainant is a member of the Iowa Civil Rights Commission (ICRC). As a member, Complainant has the authority to file a complaint alleging a discriminatory practice in violation of the “Iowa Civil Rights Act of 1965,” Iowa Code Chapter 216. Complainant alleged Respondents designed and constructed covered multifamily dwelling units in violation of the design and construction accessibility requirements of the Iowa Civil Rights Act (ICRA) and the federal Fair Housing Act (FHA). Complainant alleged Respondents violated the “accessible route into and throughout the unit” and the “light, switches, thermostats, electrical outlets in accessible locations” requirements of the ICRA and FHA.<sup>1</sup> Complainant specifically alleged, in Unit 104, 1951 North James Street, Chevalia Ridge, (1) the exterior height of the threshold level was 5 inches, which is greater than the maximum allowable threshold height of 4 inches; (2) the clear opening width of the doorway to the porch was 29 1/2 inches, which is less than the minimum allowable width of 31 5/8 inches; and (3) the height of the thermostat controls was 55 inches, which is higher than the maximum 48 inches allowed.

### Description of the Subject Property

Chevalia Ridge consists of one three-story building with six units on each floor, for a total of 18 units. There are no elevators, so only the six ground-floor dwelling units in the building are “covered”<sup>2</sup> by the design and construction provisions of the ICRA and FHA.<sup>3</sup> Chevalia Ridge was issued a Certificate of Occupancy on May 11, 2015.<sup>4</sup>

The scope of this agreement includes all 6 ground-floor units and the public/common use areas at Chevalia Ridge. The construction of all units within the subject property building was based on six different designs. The table at the top of the next page lists the unit numbers, unit types, and floor-plan design descriptions for all of the ground-floor units.<sup>5</sup>

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<sup>1</sup> Iowa Code §§216.8A(3)(c)(3)(b), 216.8A(3)(c)(3)(c)(i), and 216.8A(3)(c)(3)(c)(ii); 24 C.F.R. §§100.205(c)(2), 100.205(c)(3)(i), and 100.205(c)(3)(ii).

<sup>2</sup>“Covered multifamily dwellings” or “covered multifamily dwellings subject to the Fair Housing Amendments” means buildings consisting of four or more dwelling units if such buildings have one or more elevators; and ground floor dwelling units in other buildings consisting of four or more dwelling units.” Fair Housing Accessibility Guidelines, Federal Register, Vol. 56. No. 44, Wednesday, March 6, 1991, Rules and Regulations, page 9500.

<sup>3</sup>Iowa Code §§216.2(4)(a), 216.2(4)(b); and 42 U.S.C. §§3604(f)(7)(A) and 3604(f)(7)(B).

<sup>4</sup> Email from Scott Clyde, Building Administrator for the City of Grimes, to Morgan Daves-Gehrle, Administrative Intern for ICRC, Sub.: *Building Permit and CO*, June 12, 2015.

<sup>5</sup> See Appendix B.

UNIT NUMBER	UNIT TYPE	DESCRIPTION
105	A	2BR/1BA – 839 SQ. FT.
106	A-1	2BR/1BA – 880 SQ. FT.
103	B	2BR/1BA – 822 SQ. FT.
104	B-1	2BR/1BA – 843 SQ. FT.
101	C	3BR/2BA – 1,165 SQ. FT.
102	C-1	3BR/2BA – 1,207 SQ. FT.

#### Respondents' Defenses:

When asked in the questionnaire what was true or false about the allegations, Fusion and Squiers answered:

Unknown @ this time.

Westbrooke answered:

Will walk through unit. Units are ADA adaptable. Why wouldn't potential renter ask first?

#### Report of Preliminary Findings:

ICRC Investigators inspected five units, as well as the six public or common use areas. After conducting an onsite inspection of Units 101, 102, 103, 105, and 106, as well as the public/common use areas, ICRC Investigators found and reported the following deficiencies:

- 1) All inspected units have a sliding glass doorway onto an exterior porch. The clear opening width of the sliding glass doorway in the living room of all units measures 30 inches.<sup>6</sup> The clear opening width of the sliding glass doorways is too narrow, making them unusable by persons using wheelchairs.
- 2) All of the interior threshold heights at the sliding glass doorways exceed the 1/4-inch maximum allowed for thresholds without beveling.<sup>7</sup> The exterior threshold height onto the concrete porch for the secondary entrance in all units was measured at no less than 5 inches.<sup>8</sup> In Unit 106, the exterior surface is calculated to be at more than the 4-inch maximum below the interior finished

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<sup>6</sup> See Appendix A, Figure 1

<sup>7</sup> See Appendix A, Figure 3.

<sup>8</sup> See Appendix A, Figure 4F.

floor surface. As described above, the threshold heights are too high and render the secondary entrances to the porches unusable by tenants using wheelchairs.

- 3) After receiving a notice of the complaint and acknowledging the height for the thermostats exceeded the maximum of 48 inches as established in the Guidelines, Respondents lowered all thermostats, as verified by ICRC investigators, to a height of either 45 or 45 1/2 inches prior to the full onsite ICRC inspection of Chevalia Ridge. The height measured by ICRC investigators of the thermostats' control buttons is less than the 48-inch maximum reach limit allowed by the FHADM, making the buttons usable by a tenant in a wheelchair.
- 4) The width for the path between the kitchen island and the refrigerator was measured at no more than 37.5 inches in Units 101 and 102, which is less than the 40-inch minimum allowed by the FHADM.<sup>9</sup> The clear width for this path renders these kitchens unusable.
- 5) The height of the bottom electrical outlets in each living room, dining room, and bedrooms of all inspected units was measured at 14 inches, which is less than the 15-inch minimum required by the FHADM.<sup>10</sup> The heights measured render these electrical outlets unusable by residents who utilize a wheelchair.
- 6) The height for the bathroom towel bars in all of the inspected units was measured at no less than 56 inches, which exceeds the 54-inch maximum reach parameter established in ANSI 1986.<sup>11</sup>

#### Respondents' Response to Report of Preliminary Findings:

Respondents submitted the following responses to the reported deficiencies:

- 1) Respondents will replace the bumper with a shorter one and replace the exterior door handle to the sliding glass door of every ground-floor unit at the subject property to increase the clear opening width to no less than the minimum of 31 5/8 inches.
- 2) Respondents will install a tapered wood ramp under the carpet to bring up the floor level to the threshold height.

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<sup>9</sup> See Appendix A Figures 5 and 6.

<sup>10</sup> See Appendix A, Figure 4.

<sup>11</sup> See Appendix A Figure 7 and Figure 8.

- Respondents will install concrete pavers at the porch for Unit 106 to bring up the exterior porch level to within 4 inches below the interior finished floor surface.
- 3) Respondents already decreased the height for the thermostats. No further action is required to address this deficiency.
  - 4) Respondents will install vertical outlet adapters to increase the height of the outlets to a compliant height.
  - 5) Respondents will install refrigerators with a decreased depth to increase the clear width of the path around the kitchen islands in Units 101 and 102 to no less than 40 inches.
  - 6) Respondents will lower the towel bars in the bathrooms to a height of no more than 54 inches.

#### Assessment of Deficiencies:

Respondents stated all units were built in accordance with the requirements of the 2009 International Building Code [IBC 2009], which is not one of the safe harbors accepted by HUD.<sup>12</sup> Therefore, the FHADM must be used to assess and determine compliance with the ICRA and FHA.

Following is the assessment of the reported deficiencies, based on the scoping and technical requirements of FHADM and the technical requirements of ANSI 1986:

- 1) ICRC concurs with Respondents' proposal to replace the bumper with a shorter one and replace the exterior door handle to the sliding glass door of every ground-floor unit to increase the door-opening width to no less than the minimum of 31 5/8 inches.
- 2) ICRC concurs with Respondents' proposal install a tapered wood ramp under the carpet to provide an accessible path from the interior finished floor onto the threshold, as long as (1) the width of the ramp is no less than 31 5/8 inches, and (2) the slope for the ramp is no greater than 1:12, or 8.33%, as required by the FHADM in the section quoted at the top of the next page:

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<sup>12</sup> <http://www.fairhousingfirst.org/faq/safeharbors.html> (Last visited on March 28, 2014).

If an interior door threshold represents a change in level greater than 1/2 inch, it must be ramped and must slope at 1 inch in 12 inches maximum (1:12) [8.33%].<sup>13</sup>

ICRC concurs with Respondents' proposal to install concrete pavers at the porch for Unit 106 to bring up the exterior porch surface to within 4 inches below the interior finished floor surface.

- 3) ICRC acknowledges Respondents have decreased the height for the thermostats at all of the covered units to meet reachable height requirements, and that no further action is required by Respondents to address this deficiency.
- 4) ICRC does not concur with Respondents' proposal to install vertical outlet adapters to increase the height of the outlets. ICRC has recently learned that the use of multiplug adapters as a part of a permanent wiring system may be unsafe and violates a section of the National Fire Protection Association (NFPA) Code. The relevant section from this code reads:

#### **11.1.5 Multiplug Adapters.**

**11.1.5.1** Multiplug adapters, such as multiplug extension cords, cube adapters, strip plugs, and other devices, shall be listed and used in accordance with their listing.

**11.1.5.2** Multiplug adapters shall not be used as a substitute for permanent wiring or receptacles.<sup>14</sup>

Additionally, ICRC consulted with a building official in Iowa, who is also a member of the Board of Directors for the Iowa Association of Building Officials (IABO), about the use of multiplug adapters. The information gathered from this building official indicates the multiplug adapters do not satisfy any of the requirements from the National Electrical Code, which is drafted by the NFPA.<sup>15</sup> Therefore, ICRC will require for the non-compliant electrical outlets to be lowered, such that the midline of the bottom electrical outlet is at a minimum height of 15 inches.

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<sup>13</sup> FHADM at page 4.5.

<sup>14</sup> <http://codesonline.nfpa.org/a/c.ref/ID00001123474/sec> (Last visited on April 8, 2016).

<sup>15</sup> <https://compcolts.wikispaces.com/file/view/2011+Code+Book.pdf> (Last visited on April 8, 2016).

- 5) ICRC concurs with Respondents' proposal to install refrigerators with a decreased depth [i.e., "counter-depth" refrigerators] to increase the clear width of the path around the kitchen islands in Units 101 and 102 to no less than 40 inches.
- 6) ICRC concurs with Respondents' proposal to lower the towel bars to a height of no more than 54 inches.

#### Predetermination Settlement Agreement

A complaint having been filed by Complainant against Respondents with ICRC under Iowa Code Chapter 216 and there having been a preliminary inquiry, including an on-site inspection of the subject property, the parties do hereby agree and settle the above-captioned matter in the following extent and manner:

#### *Acknowledgment of Fair Housing Laws*

1. Respondents agree there shall be no discrimination, harassment, or retaliation of any kind against Complainant or any other person for filing a charge under the "Iowa Civil Rights Act of 1965" (ICRA); or because of giving testimony or assistance, or participating in any manner in any investigation, proceeding or hearing under the ICRA; or because of lawful opposition to any practice forbidden by the ICRA. Iowa Code § 216.11(2).
2. Respondents acknowledge the ICRA makes it unlawful to discriminate in the terms, conditions or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of race, color, creed, sex, sexual orientation, gender identity, national origin, religion, disability, or familial status. Iowa Code § 216.8(1)(b).
3. Respondents acknowledge the ICRA makes it unlawful to sell, rent, lease, assign, sublease, refuse to negotiate, or to otherwise make unavailable, or deny any real property or housing accommodation or part, portion, or interest therein, to any person because of the race, color, creed, sex, sexual orientation, gender identity, religion, national origin, disability, or familial status of such person. Iowa Code § 216.8(1)(a).

Respondents acknowledge the Fair Housing Act (FHA) makes it unlawful to sell, rent, lease, assign, sublease, refuse to negotiate, or to otherwise make unavailable, or deny any real property or housing accommodation or part, portion, or interest therein, to any person because of the of race, color, religion, sex, familial status, or national origin. 42 U.S.C. 3604(f)(1)(a) (§ 804(f)(1) of the Fair Housing Act).

4. Respondents acknowledge the FHA and ICRA make it unlawful to refuse to make reasonable accommodations in rules, policies, practices, or services, when the accommodations are necessary to afford the person equal opportunity to use and enjoy a dwelling and to the extent that the accommodation does not cause undue financial or administrative burden or fundamentally alter the nature of the provider's operations. 42 U.S.C. 3604(f)(3)(b) (§ 804(f)(3)(b) of the Fair Housing Act); Iowa Code § 216.8A(3)(c)(2).
5. Respondents acknowledge the FHA and ICRA make it unlawful to discriminate against another person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of a disability. 42 U.S.C. 3604(f)(2)(a) (§ 804(f)(2)(a) of the Fair Housing Act); Iowa Code § 216.8A(3)(b)(1).
6. Respondents acknowledge as owners, developers, builders, or managers of covered multifamily dwellings – ground-floor units in a building consisting of four or more dwelling units built for first occupancy after January 1, 1992 – must build those dwellings in compliance with specific design and construction accessibility requirements, in accordance with the FHA and ICRA. Iowa Code §216. 8A(3)(c)(3); 42 U.S.C. §3604(f)(3)(C).

HUD has described these accessibility requirements via regulation and in several publications, including the “Final Fair Housing Accessibility Guidelines.” *24 C.F.R. Part 100.200 et seq.*; *56 Fed. Reg. 9,472*. In the “Guidelines,” HUD presented the seven specific requirements as:

1. Accessible building entrance on an accessible route.
2. Accessible and usable public and common areas.
3. Usable doors.
4. Accessible route into and through the covered dwelling unit.
5. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations.
6. Reinforced walls for grab bars.
7. Usable kitchens and bathrooms.

#### *Voluntary and Full Settlement*

7. The parties acknowledge this Predetermination Settlement Agreement is a voluntary and full settlement of the disputed complaint. The parties affirm they have read and



fully understand the terms set forth herein. No party has been coerced, intimidated, threatened or in any way forced to become a party to this Agreement.

8. The parties enter into this Agreement in a good faith effort to amicably resolve existing disputes. The execution of this Agreement is not an admission of any wrongdoing or violation of law. Nor is the execution of this Agreement an admission by Complainant that any claims asserted in her complaint are not fully meritorious.
9. The parties agree the execution of this Agreement may be accomplished by separate counterpart executions of this Agreement. The parties agree the original executed signature pages will be attached to the body of this Agreement to constitute one document.
10. Respondents agree the Commission may review compliance with this Agreement. And as part of such review, Respondents agree the Commission may examine witnesses, collect documents, or require written reports, all of which will be conducted in a reasonable manner by the Commission.

#### *Disclosure*

11. Because, pursuant to Iowa Code §216.15A(2)(d), the Commission has not determined that disclosure is not necessary to further the purposes of the ICRA relating to unfair or discriminatory practices in housing or real estate, this Agreement is a public record and subject to public disclosure in accordance with Iowa's Public Records Law, Iowa Code Chapter 22. See Iowa Code §22.13.

#### *Release*

12. Complainant hereby waives, releases, and covenants not to sue Respondents with respect to any matters which were, or might have been alleged as charges filed with ICRC, the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, or any other anti-discrimination agency, subject to performance by Respondents of the promises and representations contained herein. Complainant agrees any complaint filed with any other anti-discrimination agency, including the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, which involves the issues in this complaint, shall be closed as Satisfactorily Adjusted.

#### *Fair Housing / Accessible Design and Construction Training*

13. Respondents agree Bradley Baumler, Kevin Conway, Wade Squiers, and each of Respondents' current employees or agents who are involved in the design and/or construction of covered multifamily-dwelling properties, will:

- (a) Receive training on the accessible design and construction requirements of State and Federal Fair Housing Laws within 90 days of their receipt of a Closing Letter from the Commission. The training will address the Fair Housing accessibility requirements that must be met in order to design and build covered dwellings and common use/public areas that are accessible and usable to individuals with mobility and visual impairments.

Attendance at the free training offered during the "2<sup>nd</sup> Annual Design & Construction 'Build It Right Iowa'" training conference – to be held on June 20, 2016, at Drake University, in Levitt Hall – will fulfill the requirement for this term. Otherwise, the training shall be conducted by a qualified person, approved by the Commission or the U.S. Department of Housing and Urban Development.

Respondents also agree to send documentation to the Commission, verifying the fair housing / accessible design and construction training has been completed, within ten (10) days of completing the training.

- (b) Review and become familiar with the Fair Housing Accessibility Guidelines, 56 Fed. Reg. 9472 (1991) and the United States Department of Housing and Urban Development, Fair Housing Act Design Manual, A Manual to Assist Builders in Meeting the Accessibility Requirements of the Fair Housing Act, (August 1996, Rev. April 1998), which may be obtained online at <http://www.huduser.gov/portal/publications/PDF/FAIRHOUSING/fairfull.pdf>.

#### *Required Modifications or Retrofits*

14. Respondents agree to make the following modifications or retrofits to the subject property:

##### *Usable Doors – Clear Opening Width for Secondary Doorway*

- (a) The parties agree the clear opening width of the sliding glass door in the living room of all units is 30 inches wide, which is narrower than the minimum allowed width of 31 5/8 inches, as required by the FHADM, making them unusable by persons using wheelchairs.

- (b) Respondents agree they will replace the sliding glass door bumper with a shorter one and replace the exterior door handle of the sliding glass door to every ground-floor unit at the subject property to increase the door-opening width to no less than the nominal 31 5/8-inch width required by the FHADM for secondary doorways, to make them usable by tenants who require the use of a wheelchair for mobility.

*Usable Doors – Threshold for Secondary Door*

- (a) The parties agree (1) the interior threshold height onto the carpeted surface for all ground-floor units exceeds 1/4 inch; and (2) the exterior threshold height onto the concrete porch for Unit 106 exceeds 4 inches below the interior finished floor surface; which are the maximum heights allowed for interior and exterior thresholds onto impervious exterior surfaces by the FHADM.
- (b) Respondents agree they will permanently install a tapered wood ramp under the carpet at the interior side of the threshold to the secondary doorway from the living room to the porch in all ground-floor units at the subject property, which will result in an accessible ramp with a slope of no greater than 8.33%, as required by the FHADM.
- (c) Respondents agree they will permanently install concrete pavers on the concrete porch at the exterior side of the threshold at the secondary doorway to the porch of Unit 106, to raise the exterior floor surface to within 4 inches below the finished interior floor surface, as required by the FHADM.

*Light Switches, Electrical Outlets, Thermostats, and Other Environmental Controls in Accessible Locations – Electrical Outlets*

- (a) The parties agree the height of the bottom electrical outlets in each living room, dining room, and bedrooms of all ground-floor units are less than the 15-inch minimum allowed by the FHADM.
- (b) Respondents agree to raise non-compliant electrical outlets so that there is at least one compliant outlet in each functional area of every room for the ground-floor units at the subject property, and such that the bottom electrical outlet will be at a height of no less than 15 inches, as required by the FHADM.

#### *Usable Kitchens – Kitchen Islands*

- (a) The parties agree the clearance space between the kitchen island and the opposing refrigerator in Units 101 and 102, is less than the 40-inch minimum clearance space required by the FHADM.
- (b) Respondents agree to replace the existing refrigerators with new “counter-depth” refrigerators in Units 101 and 102, to increase the clear width of the path around the kitchen island to a 40-inch minimum, as required by the FHADM.

#### *Usable bathrooms – Bathroom Towel Bars*

- (a) The parties agree the height of the towel bars in all bathrooms in the ground-floor units at the subject property exceed the reachable height of 54 inches for a parallel approach to the towel bars without an obstruction, as based on the general reach requirements established by ANSI 1986.
- (b) Respondents agree they will move bathroom towel bar to a height of no greater than 54 inches in the bathrooms at all ground-floor units at the subject property, as required by ANSI 1986.

#### *Required Timelines for Completion of Modifications or Retrofits*

- 15. Respondents agree they will allow tenants to remain in their units while the renovations are being completed, so long as their continued stay is safe and does not unduly disrupt the renovation work. If their continued stay is not safe or unduly interferes with renovation work, Respondents agree to make the above-required modifications or retrofits to each of the units as each of the units becomes vacant. Respondents agree to make the required modifications or retrofits before each of the units is rented again.

#### *Mandatory Reporting Requirements*

- 16. Respondents agree to notify ICRC when they have completed the required modifications or retrofits for all of the subject units and the public and common use areas. Such notification shall be made within 90 days of completion. These required notifications to ICRC will continue until all required modifications or retrofits have been completed in all six units.
- 17. Respondents agree, as the required modifications or retrofits are made to a particular unit, ICRC may then inspect such unit, and then report the results of its inspection,

addressing any outstanding deficiencies, in writing and within 30 days of the inspection, to Respondents.

If the inspection indicates outstanding deficiencies, Respondents shall correct all such deficiencies within a reasonable period of time as determined by ICRC, and shall pay a reasonable fee for another inspection by ICRC staff or pay for an inspection by a third party inspector, approved by ICRC.

18. The sale or transfer of ownership, in whole or in part, by any owner of the subject property will not affect any obligation to modify or retrofit the subject property as specified in this Agreement, unless Respondents have obtained, in writing, as a condition of sale or transfer, the purchaser or transferee's commitment to be bound by the terms of this agreement to complete all required modifications or retrofits as specified in this Agreement.
19. Within 90 days from the date of the Closing Letter from ICRC, Respondents agree to provide a written statement to ICRC, to the attention of Don Grove, Supervisor of Housing Investigations, which specifies how each of the above-required modifications or retrofits will be corrected.

*[Please go to next page for the signature page]*

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M & B Investments, LLC  
RESPONDENT

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Date

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Westbrooke Construction Co.  
RESPONDENT

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Date

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Wade Squiers  
RESPONDENT

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Date

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Fusion Architects, Inc.  
RESPONDENT

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Date

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Angela Williams  
COMPLAINANT

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Date

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Kristin H. Johnson, Executive Director  
IOWA CIVIL RIGHTS COMMISSION

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Date